North Plaza Sdn Bhd v Equiticorp Holdings Ltd and other appeals

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02–43–05 OF 2012(W), 02–38–05 OF 2012(W) AND 02–44–05 OF 2012(W)
ZULKEFLI CJ (MALAYA), ABDULL HAMID EMBONG, SURIYADI, AHMAD MAAROP AND ZALEHA ZAHARI FCJJ
10 APRIL 2013

Civil Procedure — Winding up — Liquidators — Appeal to Federal Court — Company wound up by High Court — Liquidator appointed — Liquidator had not constituted committee of inspection — Company owned 16 parcels of land — Liquidator tendered lands for sale — Application by creditors for injunction to restrain sale of lands by creditors — Whether liquidator appointed by court could sell lands owned by wound up company even if there was consent order appointing liquidator together with committee of inspection — Companies Act 1965 ss 218 & 236(2)(c)

In the present case, three appeals regarding an order of the Court of Appeal in refusing to grant the approval for the sale of 16 parcels of lands were heard together. In the High Court, City Centre Sdn Bhd ('CCSB') was wound up and a liquidator ('CCSB's liquidator') who had not constituted a committee of inspection due to lack of funds was appointed by the court. CCSB was the registered and beneficial owner of 16 parcels of freehold land as its sole substantial asset and since the date of its winding up, was wholly insolvent and had no ready funds. Cheah Theam Kheng ('CTK'), United Securities Sdn Bhd ('United Securities') and Equiticorp Holdings Ltd ('Equiticorp Holdings') all claimed to be creditors of CCSB while Equiticorp Financial Services Ltd claimed to be the creditors of CTS and United Securities. CCSB's liquidator took steps to realise the said lands for the purpose of applying the proceeds towards settlement of the creditors of CCSB and the distribution of any surplus to the contributory of CCSB. A tender for the sale of the said lands was conducted and the appellant ('North Plaza') became the highest bidder with the offer closing at the sum of RM163m. The bid was accepted by CCSB's liquidator and subsequently, CTK, United Securities, Equiticorp Holdings and Equiticorp Financial filed an application for an injunction to restrain the sale of the said lands. As the application for an injunction was a material change of the terms of the tender, the interest of North Plaza was affected and the latter gave a notice of its intention to revoke the bid unless the purchase price was reduced to RM158m of which was accepted by CCSB's liquidator. Both North Plaza and CCSB's liquidator then entered into a sale and purchase agreement ('SPA') which was conditional upon the court's approval. CCSB's liquidator later filed an application in the High Court for an approval to sell the said lands

('encl 71 application'). North Plaza, CTK, Equiticorp Holdings, Equiticorp Financial and United Securities applied to intervene in the encl 71 application in order to oppose the sale of the said lands on the ground that in entering into the SPA, CCSB's liquidator had not acted with the committee of inspection and their applications to intervene were successful. The High Court allowed the encl 71 application and ordered that approval be given for the sale of the said lands on the terms and conditions as stipulated in the SPA. However, the decision was reversed upon appeal to the Court of Appeal. Hence, the present appeal. The main issue that arose in the present appeal was whether a liquidator who had been appointed under s 218 of the Companies Act 1965 ('the Act'), by the court, could act independently under s 236(2)(c) of the Act to sell lands owned by the wound up company even if there was a consent order appointing the liquidator together with a committee of inspection.

Held, dismissing the appeals:

(1) The Court of Appeal was correct in holding that the liquidator's powers were limited by the consent order and the provisions of the Act which required the liquidator to act together with a committee of inspection. The Court of Appeal had arrived at a correct conclusion when they refused to sanction the sale of the said lands by the liquidator (see para 15).

(2) The terms of the consent order were clear. The liquidator was appointed together with a committee of inspection. It is a mandatory requirement that a committee of inspection be established. However, the liquidator failed to establish a committee of inspection or summon a meeting of creditors and contributories for that purpose. Instead, he carried out his functions on his own despite the fact that his appointment was together with a committee of inspection. The liquidator had thus acted in contravention and breach of the consent order. The importance of the appointment of a committee of inspection could not be overlooked. The intent and purpose of the appointment was to ensure check and balance in respect of the liquidator's acts. If this was not done the consent order that ordered liquidator to be appointed together with the committee of inspection would be rendered redundant (see para 10–11).

(3) The liquidator must act with the committee of inspection in all circumstances, and in particular when exercising the power to sell properties. A liquidator derived the power of sale under s 236(2)(c) of the Act. However, the exercise of this power was not unrestricted. The exercise of any power under s 236(2) of the Act was still subject to the control of the court under s 236(3) of the Act (see para 12).

(4) Due compliance by the liquidator of the requirements of s 237 of the Act were of importance in the present case by reason of the consent order that appointed the liquidator with a committee of inspection. In the present

case, the liquidator had not only failed to set up a committee of inspection but also acted without one. He had conveniently bypassed the requirements of s 237 of the Act and instead proceeded directly to apply for sanction of the court to safeguard his action regarding the sale (see para 14).

(5) The appellant was fully aware of the surrounding circumstances of the case when it entered into the conditional sale and purchase transaction. The appellant had knowledge of the terms of the consent order that appointed the liquidator with a committee of inspection. The appellant also had notice of the pending legal proceedings filed by CTK at the material time to restrain the liquidator from disposing of the said lands and the removal of the liquidator. The appellant therefore knew what it was bargaining for and it could not now contend that it was a bona fide purchaser for value who was not privy to the terms of the consent order (see para 17).

[Bahasa Malaysia summary

Dalam kes ini, tiga rayuan berkaitan perintah Mahkamah Rayuan yang enggan memberi kebenaran untuk jualan 16 bidang tanah telah didengar bersama. Di Mahkamah Tinggi, City Centre Sdn Bhd ('CCSB') telah digulungkan dan penyelesai ('penyelesai CCSB') yang tidak membentuk jawatankuasa siasatan kerana dana yang tidak mencukupi telah dilantik oleh mahkamah itu. CCSB adalah pemilik benefisiari dan berdaftar ke atas 16 bidang tanah pegangan kekal sebagai satu-satunya aset penting dan sejak tarikh penggulungannya, adalah tidak solven sama sekali dan tiada dana sedia ada. Cheah Theam Kheng ('CTK'), United Securities Sdn Bhd ('United Securities') dan Equiticorp Holdings Ltd ('Equiticorp Holdings') kesemuanya mendakwa adalah pemiutang-pemiutang CCSB manakala Equiticorp Holdings Ltd ('Equiticorp Holdings') mendakwa adalah pemiutang-pemiutang CTS dan United Securities. Penyelesai CCSB telah mengambil langkah untuk merealisasikan tanah-tanah tersebut bagi tujuan menggunakan hasil kutipan itu sebagai penyelesaian pemiutang-pemiutang CCSB dan pengagihan apa-apa lebihan kepada sumbangan CCSBB. Satu tender untuk jualan tanah-tanah tersebut telah dilakukan dan perayu ('North Plaza') menjadi pembida tertinggi dengan tawaran yang tutup pada jumlah RM163 juta. Tawaran itu telah diterima oleh penyelesai CCSB dan berikutan itu, CTK, United Securities, Equiticorp Holdings dan Equiticorp Financial telah memfailkan permohonan untuk satu injunksi bagi menghalang jualan tanah-tanah tersebut. Oleh kerana permohonan untuk injunksi adalah perubahan penting kepada terma-terma tender itu, kepentingan North Plaza telah terjejas dan ia telah memberikan notis tentang niatnya untuk membatalkan bidaan itu kecuali jika harga jualan diturunkan kepada RM158 juta yang telah diterima oleh penyelesai CCSB. Kedua-dua North Plaza dan penyelesai CCSB telah memasuki perjanjian jual beli ('PJB') yang bersyarat atas kebenaran mahkamah. Penyelesai CCSB

kemudian telah memfailkan permohonan di Mahkamah Tinggi untuk kebenaran menjual tanah-tanah tersebut ('permohonan lampiran 71'). North Plaza, CTK, Equiticorp Holdings, Equiticorp Financial dan United Securities telah memohon untuk campur tangan dalam permohonan lampiran 71 itu bagi tujuan membantah jualan tanah-tanah tersebut atas alasan bahawa dengan memasuki PJB itu, penyelesai CCSB tidak bertindak bersama jawatankuasa siasatan dan permohonan-permohonan mereka untuk campur tangan telah berjaya. Mahkamah Tinggi telah membenarkan permohonan lampiran 71 dan memerintahkan agar kebenaran diberikan untuk jualan tanah-tanah tersebut atas terma dan syarat sebagaimana ditetapkan dalam PJB itu. Walau bagaimanapun, keputusan itu telah diakas atas rayuan kepada Mahkamah Rayuan. Justeru rayuan ini. Isu utama yang timbul dalam rayuan ini adalah sama ada penyelesai yang telah dilantik di bawah s 218 Akta Syarikat 1965 ('Akta tersebut'), oleh mahkamah, boleh bertindak sendiri di bawah s 236(2)(c) Akta tersebut untuk menjual tanah-tanah yang dimiliki oleh syarikat yang telah digulung itu meskipun terdapat perintah persetujuan yang melantik penyelesai bersama dengan jawatankuasa siasatan.

Diputuskan, menolak rayuan-rayuan:

(1) Mahkamah Rayuan adalah betul dalam memutuskan bahawa kuasa penyelesai adalah terbatas oleh perintah persetujuan dan peruntukan-peruntukan Akta tersebut yang menghendaki penyelesai bertindak bersama jawatankuasa siasatan. Mahkamah Rayuan telah mencapai kesimpulan yang betul apabila ia enggan untuk mensanksi jualan tanah-tanah tersebut oleh penyelesai (lihat perenggan 15).

(2) Terma-terma perintah persetujuan itu adalah jelas. Penyelesai telah dilantik bersama dengan jawatankuasa siasatan. Ia adalah keperluan mandatori agar satu jawatankuasa siasatan ditubuhkan. Walau bagaimanapun, penyelesai telah gagal menubuhkan satu jawatankuasa siasatan atau memanggil satu mensyuarat pemiutang dan penyumbang bagi tujuan tersebut. Sebaliknya, dia telah menjalankan fungsi-fungsinya dengan sendiri meskipun pada hakikatnya pelantikannya adalah bersama jawatankuasa siasatan. Penyelesai dengan itu telah bertindak secara bertentangan dan melanggar perintah persetujuan itu. Pentingnya pelantikan satu jawatankuasa siasatan tidak boleh diabaikan. Niat dan tujuan pelantikan itu adalah untuk memastikan semakan dan imbangan wujud berkaitan tindakan-tindakan penyelesai. Jika ini tidak dilakukan perintah persetujuan yang memerintahkan penyelesai dilantik bersama dengan jawatankuasa siasatan akan dianggap berlebihan (lihat perenggan 10–11).

(3) Penyelesai hendaklah bertindak dengan jawatan kuasa siasatan dalam semua keadaan, dan khususnya apabila menggunakan kuasa untuk menjual hartanah. Penyelesai memperoleh kuasa jualan di bawah

s 236(2)(c) Akta tersebut. Walau bagaimanapun, pelaksanaan kuasa ini bukan tanpa had. Pelaksanaan apa-apa kuasa di bawah s 236(2)(c) Akta tersebut masih tertakluk kepada kawalan mahkamah di bawah s 236(3) Akta tersebut (lihat perenggan 12).

(4) Pematuhan penyelesai terhadap keperluan s 237 Akta tersebut adalah penting dalam kes ini oleh sebab perintah persetujuan yang melantik penyelesai bersama jawatankuasa siasatan. Dalam kes ini, penyelesai bukan sahaja gagal menubuhkan jawatankuasa siasatan tetapi juga telah bertindak tanpanya. Dia sewenang-wenangnya telah memintas keperluan s 237 Akta tersebut dan sebaliknya terus memohon sanksi mahkamah bagi melindungi tindakannya berhubung jualan itu (lihat perenggan 14).

(5) Perayu sedar tentang keadaan kes semasa memasuki transaksi bersyarat jual beli itu. Perayu mempunyai pengetahuan tentang terma perintah persetujuan yang melantik penyelesai bersama jawatankuasa siasatan. Perayu juga mendapat notis berhubung prosiding undang-undang yang masih belum selesai yang telah difailkan oleh CTK pada masa matan untuk menghalang penyelesai daripada menjual tanah-tanah tersebut dan penyingkiran penyelesai itu. Perayu dengan itu mengetahui apa yang dihadapinya dan kini tidak boleh berhujah bahawa ia adalah pembeli bona fide untuk nilai yang bukan privi kepada terma-terma perintah persetujuan itu (lihat perenggan 17).]

Notes

For cases on liquidators, see 2(2) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 9572–9573.

Cases referred to

Woodsville Sdn Bhd v Tien Ik Enterprise Sdn Bhd & Ors [1998] MLJU 659, HC (refd)

Legislation referred to

Companies Act 1965 ss 218, 236, 236(1), (2), (2)(c), (3), 237, 237(1), 241(1)

Appeal from: Civil Suit No W-02–(1M)-286 of 2010 (Court of Appeal, Putrajaya)

Wong Kian Kheong (Karen Lee and Geraldine Oh with him) (Wong Kian Kheong) in Civil Appeal Nos 02–43–05 of 2012(W), 02–38–05 of 2012(W) and 02–44–05 of 2012(W) for the appellant.

Robert Lazar (Shanti Mogan and SY Liew with him) (Shearn Delamore & Co) in Civil Appeal No 02–43–05 of 2012(W) for the first and second respondents.

Shamsol Zakri bin Zakaria (Senior Federal Counsel) in Civil Appeal No 02–43–05 of 2012(W) for the third respondent.

Manokaran (Sachpal Singh with him) in Civil Appeal No 02–38–05 of 2012(W) for the first respondent.
Shamsol Zakri bin Zakaria (Senior Federal Counsel) in Civil Appeal No 02–38–05 of 2012(W) for the second respondent.
P Gananathan (Olivia Loh with him) (Gananathan Loh) in Civil Appeal No 02–44–05 of 2012(W) for the first respondent.
Shamsol Zakri bin Zakaria (Senior Federal Counsel) in Civil Appeal No 02–44–05 of 2012(W) for the second respondent.

Zulkefli CJ (Malaya) (delivering judgment of the court):

INTRODUCTION

[1] There are three appeals by the appellant, North Plaza Sdn Bhd before this court. Appeal No 02–38–05 of 2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the respondent, Cheah Theam Kheng. Appeal No 02–43–05 of 2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the two respondents, Equiticorp Holdings Ltd and Equiticorp Financial Services Ltd. Appeal No 02–44–05 of 2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the respondent, United Securities Sdn Bhd.

[2] All the three appeals by the appellant relate to the decision of the Court of Appeal in refusing to grant approval for the sale of 16 parcels of land belonging to City Centre Sdn Bhd ('CCSB') on the terms and conditions as stipulated in the sale and purchase agreement dated 9 January 2007 ('SPA') entered into between CCSB and the appellant. The SPA was executed by CCSB through its then liquidator, Chuah Seong Phaik with the appellant at the purchase consideration of RM158m. Chuah Seong Phaik has since been removed as liquidator of CCSB. The Court of Appeal declined to approve the sale and overturned the High Court decision approving the sale.

[3] On 10 May 2012 the Federal Court granted leave to the appellant to appeal on all the three appeal cases on the following question:

> Whether a liquidator (Liquidator) who had been appointed for a company that had been wound up by court (wound up company) pursuant to s 218 of the Companies Act 1965 ('the Act') can act independently under s 236(2)(c) of the Act to sell lands owned by the wound up company despite the fact that there was a consent order appointing the liquidator together with a committee of inspection.

[4] Since there is only one order appealed against on all the three appeals, that is the order of the Court of Appeal in refusing to grant the approval for the sale of the said 16 parcel of lands, it was agreed by all the parties for the appeals

to be heard together. For the purpose of argument by the parties before us, all the parties agreed to refer to the appeal record of Appeal No 02–43–05 of 2012(W).

BACKGROUND FACTS

[5] The relevant background facts relating to the three appeals case before us may be summarised as follows:

(a) on 25 April 2000, CCSB was wound up pursuant to an order of the High Court vide Kuala Lumpur High Court (Companies Winding Up) No D6-28–9 of 2000. Chuah Seong Phaik ('CCSB's liquidator') was appointed as liquidator of CCSB pursuant to a consent order of the High Court dated 26 July 2001. The relevant part of the consent order states as follows:

> 'Encik Chua Seong Phaik dari Tetutan Paul Chuah & Co. dilantik sebagai Pelikuidasi untuk City Centre Sdn Bhd bersama dengan Jawatankuasa Pemeriksaan.' CCSB's Liquidator has not constituted a committee of inspection for lack of funds.

(b) as at the date of the winding up of CCSB, the registered member/shareholder of CCSB is OUB Nominees (M) Sdn Bhd ('UOB Nominees'). CCSB is the registered and beneficial owner of 16 parcels of freehold land located in the heart of Kuala Lumpur ('the said lands'). CCSB since the date of its winding up is wholly insolvent and has no ready funds. The said lands represent its sole substantial asset. Cheah Theam Kheng ('CTK') claimed to be a creditor of CCSB. CTK also asserted that he was a contributory of CCSB. CTK was also a director of CCSB prior to its liquidation;

(c) United Securities Sdn Bhd (in liquidation) ('United Securities') claimed to be a creditor of CCSB. United Securities also claimed to be a Contributory of CCSB. The main shareholders of United Securities appeared to be CTK and his brother, Cheah Theam Swee ('CTS');

(d) Equiticorp Holdings Ltd (in statutory liquidation) ('Equiticorp Holdings') also claimed to be a creditor of CCSB. Equiticorp Financial Services Ltd (in statutory liquidation) ('Equiticorp Financial') is not a creditor of CCSB and does not claim to be one. Instead it claims to be a creditor of CTS and a creditor of United Securities;

(e) CCSB's Liquidator took steps to realise the said lands for the purpose of applying the proceeds thereof towards settlement of the creditors of CCSB and the distribution of any surplus thereafter to the contributory of CCSB. CCSB's liquidator conducted a tender for the sale of the said lands. North Plaza Sdn Bhd ('North Plaza') was the highest bidder in the

tender. The offer that closed on 30 November 2006 was for a sum of RM163m. The bid was accepted by CCSB's liquidator by way of a letter dated 1 December 2006. The acceptance letter also informed North Plaza that subsequent to the receipt of the bid, CTK, United Securities, Equiticorp Holdings and Equiticorp Financial had filed an application for an injunction to restrain the sale of the said lands;

(f) as the application for an injunction was a material change of the terms of the tender which adversely affected the interest of North Plaza, by way of a letter dated 20 December 2006 to the CCSB's liquidator, North Plaza gave notice of its intention to revoke the bid unless, amongst others, the purchase price was revised to a reduced sum of RM158m. Following receipt of the North Plaza's letter, by way of a letter dated 22 December 2006, CCSB's liquidator accepted North Plaza's terms and confirmed that the sale price of the said lands would be revised to RM158m. North Plaza and CCSB's liquidator then entered into a conditional sale and purchase agreement dated 9 January 2007 ('SPA'). The sale was conditional upon court's approval;

(g) on 10 January 2007 CCSB's liquidator filed an application in the High Court for an approval to sell the said lands via encl 71 ('encl 71 application'). North Plaza applied to intervene in the encl 71 application hearing. On 6 December 2007 the High Court allowed North Plaza's application to intervene;

(h) subsequently, CTK, Equiticorp Holdings, Equiticorp Financial and United Securities (via its liquidator) also applied for leave of the High Court to intervene in the encl 71 application in order to oppose the sale of the said lands. Their application to intervene in the encl 71 application was also allowed by the High Court; and

(i) at the hearing of the encl 71 application, CTK opposed the application on the ground that in entering into the SPA, CCSB's liquidator had not acted with the committee of inspection in contravention of the consent dated 26 July 2001 order. This issue was also raised by Equiticorp Holdings, Equiticorp Financial and United Securities in opposing the encl 71 application. In addition, Equiticorp Holdings, Equiticorp Financial and United Securities took issue with the price at which the said lands were sold to North Plaza.

FINDINGS OF THE HIGH COURT

[6] On 21 December 2009, the learned High Court judge allowed the encl 71 application with no order as to costs. Accordingly, the High Court ordered that approval be given for the sale of the said lands on the terms and

conditions as stipulated in the SPA. Further, the High Court by consent, ordered that CTS, CTK, Lim Choon Hong, their servants, agents nominees and/or whosoever otherwise, be restrained from interfering in any way in the sale of the said lands provided that the parties are at liberty to exercise their rights of recourse to the courts. In her judgment, the learned High Court judge held, inter alia, as follows:

> … the words 'bersama dengan Jawatankuasa Pemeriksaan' merely echo the provisions of sub-s 241(1) of the Companies Act 1965. To my mind, the order cannot be interpreted to mean that regardless of the provisions of the Act, in all and every case, the liquidator MUST act WITH the committee of inspection. Quite obviously, where a liquidator is empowered by the Act to act on his own, there is no role for the committee of inspection. The sale, among others, of the immovable property of a wound up company is among the power which a liquidator can undertake on his own without reference to the committee of inspection. This is clear from sub-s 236(2) of the Act, especially, as was submitted for the liquidator, when the provision is compared to sub-s 236(1). The liquidator's exercise of the powers however is subject to the control of the court.

FINDINGS OF THE COURT OF APPEAL

[7] Being dissatisfied with the decision of the High Court, the following appeals were filed at the Court of Appeal:

(a) W-02–286 of 2010 — appeal by Equiticorp Holdings and Equiticorp Financial;

(b) W-02(IM)-124 of 2010 — appeal by CTK; and

(c) W-02(IM)-287 of 2010 — appeal by United Securities.

[8] On 25 October 2010 the Court of Appeal allowed all three appeals with costs. In its judgment, the Court of Appeal, inter alia, made the following findings:

(a) the learned High Court judge erred in holding that the words 'bersama dengan Jawatankuasa Pemeriksaan' which appear in the High Court order dated 26 July 2001 merely echo the provisions of sub-s 241(1) of the Act. The learned High Court judge failed to appreciate the provisions of s 237(1) of the Act which regulates the exercise and control of the liquidator's power. It provides that the liquidator shall in the administration of the assets of the company and distribution have regard to the directions given by resolution of the creditors/contributories or by the committee of inspection;

(b) s 241(1) of the Act is not applicable because the High Court by its order dated 26 July 2001 has already made the determination that the

liquidator is to act with a committee of inspection. The liquidator, in our judgment is obliged to do so. Sad to say he did not;

(c) s 236(2) of the Act empowers the liquidator to sell immoveable property. The learned High Court judge failed to appreciate that the exercise by the liquidator of the powers conferred on him by s 236 of the Act is subject to the control of the court as provided for in s 236(3) of the same Act;

(d) by way of encl 71 application, the liquidator sought the sanction of the High Court for the sale of the said lands. The said lands were the only assets of CCSB. The learned High Court judge failed to appreciate that directions of the committee of inspection are mandatory for such sale. It is not an option on the part of the liquidator to act without the committee of inspection. The sale of the said lands to North Plaza is tainted and sanction for the same should not have been granted by the learned High Court judge; and

(e) when the liquidator filed the encl 71 application and sought approval of the High Court for the sale of the said lands to North Plaza, the learned High Court judge has to exercise her discretion judiciously. To approve the sale entered into by the liquidator with North Plaza would be to ignore the consent order recorded by another High Court judge vide the High Court order dated 26 July 2001 which consent order imposed the requirement that the liquidator must act with the committee of inspection. It would be unfair to approve the sale and it would be against the consensus and legitimate expectation of the contributories and creditors.

DECISION OF THIS COURT

[9] Learned counsel for the appellant submitted before us as its main ground of appeal that the previous liquidator can act independently of the committee of inspection. It was contended that s 236(2)(c) of the Act permits the liquidator to sell immovable property without the authority of the court or the committee of inspection.

[10] With respect we could not agree with the above contention of the appellant. The terms of the consent order are clear. The liquidator was appointed together with a committee of inspection. It is hence a mandatory requirement that a committee of inspection be established. However, the liquidator failed to establish a committee of inspection or summon a meeting of creditors and contributories for that purpose. Instead, he carried out his functions on his own despite the fact that his appointment was made 'bersama

dengan Jawatankuasa Pemeriksaan'. The liquidator has thus acted in contravention and breach of the consent order.

[11] We would state here that the importance of the appointment of a committee of inspection cannot be overlooked. The intent and purpose of the appointment is to ensure check and balance in respect of the liquidator's acts. If this is not done the consent order that ordered liquidator to be appointed together with the committee of inspection would be rendered redundant. On this point we would cite the case of *Woodsville Sdn Bhd v Tien Ik Enterprise Sdn Bhd & Ors* [1998] MLJU 659 dated 31 May 2000 at pp 51–53 wherein His Lordship Abdul Aziz Mohamed J (as he then was) in his judgment had this to say:

> One thing to note is that the committee of inspection, as the general body of creditors and contributories, are not advisers to the liquidator. They are people, as representing the creditors and contributories, who have claims on the company. They are the master. The liquidator is to serve their interests. So they are empowered, as they naturally should be, to give directions to the liquidator.
>
> A wish of the committee of inspection is a direction to the liquidator. Their wish is his command.

In our judgment the liquidator must act with the committee of inspection in all circumstances, and in particular when exercising the power to sell properties.

[12] It is noted that a liquidator derives the power of sale under s 236(2)(c) of the Act. However, the exercise of this power is not unrestricted. The exercise of any power under s 236(2) of the Act is still subject to the control of the court under s 236(3) of the Act. Section 236(2)(c) of the Act provides as follows:

> (2) The liquidator may —
>
> (a) …
>
> (b) …
>
> (c) sell the immovable property and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;
>
> (d) …

Section 236(3) of the Act further provides as follows:

> (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

[13] It is also to be noted that the exercise of the liquidator's powers under s 236 is further regulated by s 237 of the Act which provides as follows:

> Subject to this Part *the liquidator shall in the administration of the assets of the company and in the distribution thereof amongst its creditors have regard to any directions* given by resolution of the creditors and contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict override any directions given by the committee of inspection. (Emphasis added.)

[14] We are of the view due compliance by the liquidator of the requirements of s 237 of the Act are of importance in the present case by reason of the consent order that appointed the liquidator with a committee of inspection. In the present case the liquidator not only failed to set up a committee of inspection but acted without one. He has conveniently by-passed the requirements of s 237 of the Act and instead proceeded directly to apply for sanction of the court to safeguard his action regarding the sale.

[15] It is our judgment that the Court of Appeal was correct in holding that the liquidator's powers are limited by the consent order and the provisions of the Act which require the liquidator to act together with a committee of inspection. The Court of Appeal had arrived at a correct conclusion when they refused to sanction the sale of the said lands by the liquidator.

[16] As regards the sale and purchase transaction of the said lands, it is noted that it was conditional upon sanction being obtained from the winding up court. This is reflected in cl 4.02(c) of the sale and purchase agreement as a condition precedent. The appellant had notice that without the sanction of the winding up court, the transaction cannot be performed or completed.

[17] We are of the view the appellant was fully aware of the surrounding circumstances of the case when it entered into the conditional sale and purchase transaction. In this respect, the appellant had knowledge of the terms of the consent order that appointed the liquidator with a committee of inspection. The appellant also had notice of the pending legal proceedings filed by Cheah Theam Kheng at the material time to restrain the liquidator from disposing of the said lands and the removal of the liquidator. It is thus not surprising that the sanction from the winding up court became a necessary condition precedent. The appellant therefore knew what it was bargaining for and it cannot now say that it is a bona purchaser for value who was not privy to the terms of the consent order.

CONCLUSION

[18] For the reasons abovestated we would answer the question posed in this

appeal in the negative. In the result we would dismiss all three appeals with costs. We award RM100,000 costs to the first respondent, RM80,000 to the second respondent and RM80,000 to the third respondent. Deposit to be refunded.

Appeals dismissed.

Reported by Afiq Mohamad Noor